

the FCC's administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the FCC's rules.

(c) At regular intervals, the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing, except for low power TV, TV translator, TV booster, and non-reserved band FM stations. Pursuant to §§ 73.3571(c), 73.3572(c) and 73.3573(d) such notice shall establish a cut-off date (not less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

(d) New and major change applications for non-reserved band FM stations (except for Class D stations) and for low power TV and TV translator stations will be accepted only on date(s) specified by the Commission. Low power TV and TV translator station filing period(s) will be designated by the Commission in a Public Notice. No more than five (5) applications for new low power TV or TV translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one (1) percent or greater in any applicant(s) in a single filing period. This restriction does not apply to applications for major or minor changes in low power TV or TV translator stations as defined by § 73.3572. Non-reserved band FM facilities and major change applications will have filing dates designated by the Commission in the following manner:

(1) For all vacant non-reserved band FM allocations listed on the FM Table of Allotments, § 73.202, as of March 14, 1985, a one-time filing period or "window" will open for 30 days, beginning on the 31st day after the date of publication of the *Report and Order* in MM Docket No. 84-750 in the FEDERAL REGISTER and will close on the 60th day after such publication. (This filing window does not apply to the 689 FM channels added to the FM Table of Allot-

ments by the Commission's decision in MM Docket No. 84-231).

(2) The 689 FM allocations added to the FM Table of Allotments by MM Docket 84-231 will be subject to a series of windows. The Audio Services Division of the Mass Media Bureau will establish, by Public Notice, the window filing dates for this group of allotments.

(3) Each *Report and Order* specifying a new non-reserved FM band allocation will identify the window filing period which will begin upon the effective date of that *Order* and continue for at least 30 days.

(4) Where no applications are tendered during a window filing period, applications may be tendered any time after the window closes. These applications will be processed on a "first come/first serve" basis and will be treated as simultaneously filed if filed on the same day. Any applications received after the filing of a lead applicant will be placed in a queue, according to filing date, behind the lead applicant.

(5) If a non-reserved band FM channel allotment is vacant after the grant of a construction permit becomes final, because of a lapsed construction permit or for any other reason, the FCC will, by Public Notice, announce a subsequent filing window for the acceptance of new applications for such channels.

(6) However, no application will be accepted for tender unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

(e) Applications for operation in the 1605–1705 kHz band will be accepted only if filed pursuant to the terms of § 73.30(b).

[44 FR 38499, July 2, 1979, as amended at 50 FR 19943, May 13, 1985; 52 FR 7421, Mar. 11, 1987; 52 FR 31400, Aug. 20, 1987; 56 FR 64873, Dec. 12, 1991; 57 FR 34878, Aug. 7, 1992; 59 FR 31556, June 20, 1994]

§ 73.3566 Defective applications.

(a) Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and

will not be accepted for filing or if inadvertently accepted for filing will be dismissed. Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.

(b) If an applicant is requested by the FCC to file any additional documents or information not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective, and such application will be dismissed.

[44 FR 38499, July 2, 1979]

§ 73.3568 Dismissal of applications.

(a) Subject to the provisions of § 73.3523 (Dismissal of applications in renewal proceedings) and § 73.3525 (Agreements for removing application conflicts), any application may, upon request of the applicant be dismissed without prejudice as a matter of right prior to the designation of such application for hearing. An applicant's request for the return of an application that has been accepted for filing will be regarded as a request for dismissal.

(b) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Subject to the provisions of § 73.3525, such dismissal will be without prejudice where an application has not yet been designated for hearing, but may be made with prejudice after designation for hearing.

(c) Subject to the provisions of § 73.3523 (Dismissal of applications in renewal proceedings) and § 73.3525 (Agreements for removing application conflicts), requests to dismiss an application without prejudice after it has been designated for hearing will be considered only upon written petition properly served upon all parties of record. Such requests shall be granted only upon a showing that the request is based on circumstances wholly beyond the applicant's control which preclude further prosecution of his application.

[44 FR 38499, July 2, 1979, as amended at 54 FR 22599, May 25, 1989]

§ 73.3571 Processing of AM broadcast station applications.

(a) Applications for AM broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change is any increase in power except where accompanied by a complimentary reduction of antenna efficiency which leads to the same amount, or less, radiation in all directions (in the horizontal and vertical planes when skywave propagation is involved, and in the horizontal plane only for daytime considerations), relative to the presently authorized radiation levels, or any change in frequency, hours of operation, or community of license. However, the FCC may, within 15 days after the acceptance for filing of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 73.3580 and 1.1111 of this chapter pertaining to major changes.

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

(3) The third group consists of applications for operation in the 1605-1705 kHz band which are filed subsequent to Commission notification that allotments have been awarded to petitioners under the procedure specified in § 73.30.

(b) If an application is amended so as to effect a major change as defined in paragraph (a)(1) of this section or so as to result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed, § 73.3580 will apply to such amended application.

(c) Applications for new stations or for major changes in the facilities of authorized stations are processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and are drawn by the staff for study, the lowest file number first. Thus, the file number determines the order in which the staff's work is begun on a particular application or